

Probation Services Task Force Meeting Minutes
Judicial Council Conference Center, San Francisco, CA
November 7, 2002

Task Force Members Present: Hon. Patricia Bamattre-Manoukian, Hon. Irma J. Brown, Hon. Denny Bungarz, Hon. Trish Clarke, Mr. Alan Crogan, Mr. William Davidson, Hon. Ronn Dominici, Hon. Steven E. Jahr, Mr. Phil Kader, Hon. Kevin M. McCarthy, Hon. Frank J. Ochoa, Mr. Michael Roddy, Hon. John Tavaglione, Mr. John Wardell

Task Force Members Not Present: Ms. Sheila Gonzalez, Mr. Michael D. Johnson, Mr. Bill Mahoney, Mr. Ralph Miller, Mr. Paul Nicolosi

AOC Staff: Ms. June Clark, Ms. Audrey Evje, Ms. Allison Schurman, Mr. Francis Shahadeh

CSAC Staff: Ms. Elizabeth Howard, Mr. Rubin Lopez

CPOC Staff: Ms. Norma Suzuki

Welcome and Introductions

Welcome was extended to Mr. Francis Shahadeh, judicial administration fellow, will be working on the legislative end of things if we go forward with an appointment model.

Technology Working Group Update

At the last meeting Sheila mentioned that the American Probation and Parole Association has formed a national technology group to look at automated case management systems. They will be issuing a report in December, sending it out for comment. That group does have a member from parole in California but they do not have a member from probation. We talked about trying to get someone in that group but since they are at such a late stage in their work, it is too late to change the membership but we will look at that report and incorporate portions of it in our final report and we can review those at our February meeting.

San Diego is working with Sunnovation out of Stanislaus County on a multifaceted data system. Maybe at some point we would like them to make a presentation to us on the technology capabilities on a statewide basis.

Qualifications of the Chief Probation Officer

Line staff have asked us to include minimum qualifications in our report. Not necessarily as part of any legislation but as something we might want to consider including from the employee subcommittee of the task force. I have pulled together an excerpt from the SCOPO bill, two comments relating to qualifications from our interim model, and the CPOC qualifications. This is not something that we have to include but it is one of the items left on our agenda to discuss before we draft the final report.

Request is that the final report make a recommendation concerning minimum qualifications of a chief probation officer.

It is clearly the input that the task force has been getting from line staff. CPOC chiefs can address this as well.

From a county perspective, if individual counties continue to be responsible for employees to impose a statewide standard is something that is inconsistent with local control issues from our general CSAC platform. In addition, you will probably encumber any suggestion relative to that with issues relative to costs to the state because if you impose certain mandates upon a local entity they encumber costs. If it is an overall concept of shifting and realigning responsibilities in that context that is conceivable that you would have a mandate but also an assumption of greater responsibility by entity other than the local entity. As long as it has a local price tag it is a problem for counties.

You are saying there will be opposition by counties on any recommendation that sets forth certain minimum requirements for chief probation officers.

Defer discussion on this topic until after the long term governance model.

Review of task force progress:

Charge 1: we formulated a principle that courts and counties should develop and implement partnerships to administer probation departments and work collaboratively to ensure appropriate levels of ... noting that probation services are under funded but despite these challenges probation departments are being creative in finding many services at the local level. We developed recommendation 1: ...

Charge 2: many of our findings went to services. We developed most of our recommendations in the area of services including assessment and classification systems and tools, continuance of services and sanctions relating to prevention and early intervention efforts, partnership and collaboration, workload and issues such as that.

Charge 3 & 4: this is where we are today. We have explored various org structures including local and state commissions, state executive branch departments, local executive oversight, local and state judicial and elected chief probation officer and various combinations.

Charge 5: we brought in reps from other states and received input from them as well as our national white paper prepared by the APPA. Which did look at probation across the nation and gave us the framework for what is going on nationally.

Charge 6: long term discussion today. There has been a sense throughout the task force that certain probation functions are aligned with the courts however, certain functions may not be core court functions.

We have completed the following towards the final report:

- Answered the charge related to services and have a broad stroke as to what services are provided in California. We haven't gone into probation departments and determined what services they are providing and who they are serving, if they need additional funding, etc.
- Technology needs of probation.
- Governance
- Education

Probation Fiscal Review Discussion

Tina Hansen, Stephen Nash and Melanie Jones from AOC finance

Focus of discussion is to find out what it is that the task force wants, why you want it, how you plan on using it so that we can have some dialogue on what we need to do and need not do especially given the budget crisis.

What is it as far as budget information that you think is obtainable and what do you need for this report and when are you looking at having any kind of a recommendation will be implemented? If you get data today, by the time you need it will it be valid. How much data is really available? To what degree and how accurate is it going to be? We want to avoid people doing a lot of work that results in garbage.

How are you going to approach the subject of under funding? How are you going to figure out what adequate funding would be? Let's say you can figure out what probation costs. How do you get information on what it costs to adequately fund probation?

Start by funding from a single source. Probation departments are funded now, in a ballpark sense, 50% through counties and 50% through non-renewing grants. Even with the same dollars, getting a stable source of funding.

That would be a significant increase in state funding because you would be replacing money that comes in through grants. Who are the grants coming from? State, Federal, private?

If no one writes the grants anymore then you are talking about replacing the funding and the state will not look favorably on that.

The problem is deeper than that. We don't have an idea yet of how those programs are funded. How many programs funded by grants are mandated? There could be the dilemma of not having the grant money but not even knowing how much of that grant money goes to mandated services.

Even if the state has a lot of money it will be a difficult argument to replace federal dollars with state dollars. Coming from department of finance the marching orders even in good years are to chase grants. It is hard to manage an operation when a big share of your budget is unstable. Having said that I want to go back to the initial question, are we looking at current level of services? It will be difficult to entangle that from enhanced services. There are a lot of core services that are not being provided. How do you identify that?

What specifically are we looking at?

It's not realistic to move away from grant funding. State agencies live on grants as well.

Looking at it from a systems approach, how can you recruit and retain probation officers when the grant dollars may dry up in two years and then they are gone. We are losing a lot of great people due to lack of funding. We are looking to take a systems approach and make some positive recommendations that may not be implemented today or tomorrow but will be on the table and will continue to be investigated and studied with the hope that changes will be made.

How far in the future are you looking at? Then if you go to all of the trouble to collect the data, will it be valid? It will be very difficult to collect the data. I agree that in order to make an ultimate decision you need that kind of data, but I would hate for everyone to go through all of the work to collect the data that if you don't implement within five years you will have to do it all over again. You might be better off sampling a few counties as to the kind of things that are missing in this data so you can make a statement in your report as to the kinds of things that you think are missing, e.g. overhead, talk about some of the inadequacies and mandates that are not being fulfilled so that you talk about it in more of a global nature.

Could you produce questions that need to be answered in developing the data that we need?

I can do it from a general standpoint as the kinds of questions that I would ask however I do not have knowledge of probation.

How long would it take to develop that list so that we could come closer to finding out what these costs are?

3 years of gathering but maybe we can get snapshots and find out what needs to be answered before our report is produced.

The numbers we have are produced by the probation business managers based on the knowledge of their county's budget and a recognition that things are different in every county.

For the list, are we articulating a number of items that we will go back to selected counties and say give us the information in these areas so that we have a common baseline to move from.

Or just ask if these numbers include "x", "y" or "z".

How much information do we need then? TCF was in progress for 12 years, in existence for 4 and you project another 10 to figure it all out, we are not going to get a hard picture of probation costs.

We are not talking about costing out a transfer of probation now. I think it is years down the road.

If we are thinking that these are costs that would provide an impetus to centralize the administration of the probation system and provide stabilized funding for that we had better have more sophisticated data that can be used to convince them that you can afford to do this and this is how you can afford to do this.

We have all sorts of problems because TCF was not supposed to cost any money. They will not give money now.

The questions will be more probing relative to costs. If we don't have the answer we have at least tried to get it. Yes, this is helpful. Yes the materials with the snapshot are helpful, but if you expect a lobbyist to get this out and go before a fiscal committee and they ask if these are hard numbers we better not lie to them.

You live with the fiscal impact statement numbers for the rest of your life.

We can't have all of the answers but we have to know more than we did then.

If we can't give them a proposal until we figure out how much it is going to cost, we will never get there.

Go to the six snapshot counties and ask them how true the numbers are to them, and find out what the difference is, what is not included and somehow try to extrapolate into the number, understanding that we are certainly not going to get

the number in the next three months. We could get a rapid turn around, this is manageable. That would get us closer to this issue. I would think that could point us in the direction of a general overview and get us closer to where we need to be.

Maybe that idea can remedy some of this and we can move on.

The cost issue is less important than the political calculus, the issue that we have been struggling with from the beginning and that is that in most of the counties, the judge appoints, the county funds. The TCF has created an issue about governance in the probation department. The political issue is where we should put the pressure and let it be known that the tension will continue to lead to very difficult circumstances for probation.

You can lay out the report and say that things need to change because they are not functioning but my warning to people is that the report better not put a price tag on this unless we are sure it is close because if you do, you are stuck with the number. I don't think the counties and hopefully the courts are willing to do this unless we have better information than before.

We need to get someone interested in this now. I hope that by the preparation of the task force work here we can move the timeline forward. We must have better background material than TCF.

What are we going to do in the report? What recommendation are we going to make with regard to stable and adequate funding and what are the numbers. These are our choices:

We can do nothing say the status quo is unacceptable we need stable and adequate funding and there is work to be done. (2) we can lay out the plan as to how we are going to gather this information without including any numbers or figures to be bound to forever more (3) we can do all of that and do a small sample of our snapshot counties, (Fresno, Los Angeles, Placer, Glenn, Santa Clara, Santa Cruz) indicate in the report what those figures include, do a lot of disclaimers and disqualifiers and only present six counties so there is no bottom line or (4) we can try to develop a mechanism to survey all 58 counties through CPOC to get some representative numbers and include a lot of disclaimers and disqualifiers to say that we don't know if this is everything but the sampling indicates that the bare minimum is in excess of "x".

I only wonder in number 3 and 4, you end up with a number. What are you going to do with that, what does it really mean and how does it impact your recommendation?

What difference does it make if it costs 2 billion or 4 billion?

The difference is that we have a number that we are comfortable with defined tools to provide assurance to the state that their commitment isn't going to be higher than that or that there are resources available to reach that number so that

you are responsible for growth factors. So we have an idea of how we attack the overall problem. We establish whether or not that we have enough information to convince counties that they might want to pay an MOE based on this number for these functions because that is what they were paying before and they escape responsibility in the future. Maybe we convince the courts with this number that somewhere along the way if we don't reach it by these other factors, it is something that you have to live with or find your own resources to pay for. It brings us back to reality.

I think the counties recognized a long time ago that we all do things differently, which is why we have the three caucuses. If we had a better sampling, three from the urban, rural and suburban for example, we might get better data. I can go back to Riverside County and find an accurate number. I would ask Alan to do that for San Diego, and I am sure that I can get the numbers for San Bernardino and Orange counties.

Before we put together a budget you have to identify agreeable services.

From the inception of this task force, there was a consensus that probation services are under funded and there has been a real focus at the state level on funding corrections as opposed to community corrections. One of the things I hope would come out would be the realignment of funding between corrections and community corrections.

Washington state did an interesting study on putting money up front in services particularly on the juvenile side and the resulting savings and cost offsets that happen. From a state policy perspective, there are a lot of people willing to listen to that discussion. The study looked at the total program statewide and what is the value that you get for each dollar that you put in. Some of the best savings that they found were in juvenile community corrections, where they saw long term benefits as a result of putting money in services there. Looking at it over the life, what is the net present value of putting some money into various programs? What is the public buying for that? There is definitely an argument to be made there.

Maybe that should be the short term recommendation, that that sort of study be undertaken a look at corrections overall.

I think we can identify the current state of funding. We have the ability to identify that as we go through this process, what ought to be evaluated in identifying the cost that would be transferred to the state. How are we going to convince a policy maker to take on a liability that we can't articulate in any way shape or form?

Include references to studies that say if you put money in to the front end you can save at the back end and in the middle as well. If you can establish that, isn't that part of the argument that you can afford that in the future?

We are talking about significant service expansions. How do we get money for expanding funding when we can't fund current services?

It seems to me that the grant funding is to expand a service but not focus on a mandated service. Maybe by separating that out and looking at strictly the mandated service and then looking at the other we would get a better picture of what it costs.

How to approach the budgetary issue? We are doing a complete study of the statutes and will know the mandated services. We can gather from every county if we ask the right questions information on what they are spending on the mandated services. Do we want to ask how much it would cost to provide only mandated services? Of the monies that each probation department has how much are grant funded. That would give us a broad picture. Readers will be astounded that mandates are not being met. The next step is to show what you need to fund the mandated services. Do we want to include this?

The mandated services are not being funded. To talk about adequate services, you need standards. If you talk about funding the mandated services so they are adequately maintained, that is another even higher number.

I think this will be a lot of work, and then I'm not sure what you can get.

The issue of under funding in probation is a public safety issue. We need to make it real for people. Under funding has tangible results.

What support are we asking for?

Unless you do a lot of work to gather numbers, you are not going to get accurate numbers.

You need to think about how you are going to use the information and then think about how much work is worth it.

There is some justification to try to see where we are through a sample of three urban, suburban, and rural counties.

Talk about what is not in the budget numbers so people can get a picture of how big it is. Then get samples of the mandates that aren't happening. You can talk about it without specifics that you can get tied down with.

Steven will send the link to the Washington state survey.

If you start getting interest to do something about the problem you can start looking at more concrete data.

We will take the approach of surveying some of the counties that are present on the task force to get financial data. Counties to include are: Riverside, Fresno, San Diego, Glenn, Butte, Madera, Shasta, and San Bernardino.

The best approach is to get the line item budget, ask some specific questions and find all the revenue sources.

We can over the next several days commit to a description of things that should be asked or the kinds of questions that need to be asked that we can then provide to staff so we have the same thing. Staff will forward this to the task force.

Are there subject matter experts that can make sure we are asking the right questions? Norma, Audrey, and Rubin.

Norma will speak to the president of our business managers meeting. Are there areas that she can lead us to that are not reflected?

Breakdown on TANF 4E

Next step: Mr. Nash will work with Norma and Audrey to identify the information that we need from every county. We will run this by Rubin to see if this adequately addresses the concerns of the task force. We will communicate this to those individuals who have agreed to get the information from their counties.

You don't want to extrapolate. Talk about the sample counties specifically.

Model for Appointment, Evaluation, Discipline and Termination of Chief Probation Officer

We received 20 comments from the counties, 12 from the courts, 9 from probation, and 2 from the public.

Court comments on version 2 were more supportive than comments on version one. There were definitely some concerns about moving away from exclusive court appointment for the chief probation officer.

County comments: some found version two more acceptable, others expressed concerns even with the interim model. They are fearful that if you come up with this interim model it will stick. Because it doesn't solve the problem it will be used as a tool to fend off solving the problem in the future.

What will counties say in regard for legislation? There is an opposition out there and that puts CSAC staff in a difficult position.

Probation comments were mixed support and opposition. CPOC did not have time to discuss this second model as an organization. The association has not met as a group to discuss the model so each individual response should be interpreted as an individual response.

On December 11, 2002 CPOC will discuss version 2.

We need to do the long term model, come up with some recommendations, go back to the interim model. Just throwing the interim solution out doesn't give people enough information to make comment. This model is intended to keep the tension that exists because if we eliminate that then the possibility of moving to a state model.

Another option is to decide whether or not legislation should be introduced.

I agree that if we eliminate the tension we will not have the opportunity to go to a state model. I view that as being the best solution for the public that we serve because it is there that the resources can be brought to bear to improve the services that are so wanting right now. I am also concerned that there are those that don't see it that way and will press legislation without delay to shift the hiring and firing to the board of supervisors which will in my view at least foreclose any serious examination at the state level because in effect that legislation will solve the problem. While it is crucial that we develop and recommend a long term solution it is vital that we develop an alternative short term solution of the sort that is now before this body so that at a minimum we are presenting an alternative to a potential effort to essentially unlink the courts from the probation officers. I read the comments carefully and I agree that a number of commentators didn't focus on the fact that this was interim recommendation. Many wrote as though this was the be all and end all and criticized it on that basis for obvious reasons. My recommendation is that we press forward and approve for recommendation for legislation action an interim model without delay so that we are on record as proposing notwithstanding what we are bound to see because it doesn't create a long term solution. If we don't speak on the issue, the political vacuum will be filled and I fear that it will be filled by people who say we have to change this right now to the board of supervisors. This may be advocated by people who are doing the responsible thing from the county perspective but in the long term they will be saddled with a terrible accelerating expenditure for decades to come and there will be no revisiting it. I believe version 2 is as good a compromise alternative as is available given the need to develop a long term governance model, though I would not approve of it as a long term governance model.

So the plan is develop a long term, press for short term with a plan toward educating everyone about the long term plan even though it may not be solidified. Let everyone know that this is meant to be put in place to get us through until the long term model. There has to be the educating component or marketing.

At least two counties will introduce legislation and it will be exceedingly difficult if not impossible for us in good faith to say that we are still working on something this time around.

Once the two get it I can see the dominoes fall and then there is no opportunity for a state model.

I feel pretty strongly that if CSAC is not on board the Judicial Council will not go forward.

If we convince the counties that this is an interim step and not a solution to the problem. Maybe they can be persuaded that their opposition is foolishly implied

here. Those that have expressed opposition are not there then or if we are going to do that CSAC may not be able to go along.

The potential is that we like this proposal but we need to educate people who have raised concerns and address it, with the idea that the intention is to jointly present legislation in that area. I have to know which direction it is going to go.

A better understanding could be gained by those who commented and certainly a proposal for an interim solution could be highlighted by proposing it with a sunset date so it is clear that this is interim model.

Even if counties have the authority they will never escape the responsibility to follow court orders relative to the duties that have to be carried out. I don't agree that anyone wants to be satisfied with solving the appointment authority and walking away.

That was the problem with the comments.

If we move on the interim solution, we are going to work on it based on this model but will seek to get legislation in that area and one way to do it is introduce a spot measure with some declaratory language. This would give us the time to educate and have them buy into the overall solution that we are seeking and support of the overall solution between now and when this comes up for budget discussions in late May. We may come to a point where one side or the other says pull the plug and I hope it doesn't come to that. We have to go in hand in hand or not at all.

If we are not able to come up with a permanent solution, nothing we come up with will make any sense. Our time would be better spent on the long term governance model.

We should press forward with legislation but only if there is support by both CSAC and the Judicial Council. The legislation might be in the form of a declaratory bill.

It's a legislative trick. You introduce a piece of legislation that will address the appointment of the chief probation officer. It lets the world know that this is what is going to be in this bill once we reach consensus. It says that there seems to be an agreement by the Judicial Council and CSAC but either can back off. It gives us time to do education and come to a consensus and if there is an inability to come together one can gracefully drop out. We want to make sure that we educate all of the stakeholders to get the nay Sayers on board.

If we come up with the right recommendation for the final solution we will not need to develop another interim model. People will be on board with version 2.

Long Term Governance Model Discussion

Times are not so good for the state. We may need to factor in the state budget situation. To say in the report that the state should assume funding of probation may not be very well received at this time. To say that there be an adequate and stable source of funding without identifying the state is another suggestion. Is everyone still in agreement with that earlier recommendation as to the funding and how do you want to phrase it. That transitions into a discussion of at least the employees that work in the courts and in the field. Probation has been very clear with us that you can't separate services in the courts, field, and institutions. It is a continuum. It would be unwise to have employees who work for the courts in the courts and employees who work for another entity in the facilities. Probation has been clear that the same chief probation officer has to be in responsible for all the services. Is that the consensus?

Yes.

As to the long term governance model, we could first talk about the court and the field services and the status of employees and funding. It seems like we have a lot of consensus as to those issues. Is that accurate?

Yes.

The long term recommendation is basically looking to a stable and adequate source of funding whether we say state or not.

I think if we don't say state, we don't really make a recommendation. I disagree that it will be DOA if we say the state ought to fund it given the state doesn't have any money. I think that is cyclical and we can't take that into consideration when making our recommendation as to what is good for probation. If we want to put language in there that says at such time as the state can afford it, then do that but our recommendation as to the solution has to say what the solution is whether the state can afford it or not.

I agree. Irrespective of whether there are additional monies to augment probation budgets if there were just a reconfiguration of existing resources under a state model you would alleviate the difficult circumstance that exists now for probation departments with mixed leadership. That is an untenable situation for probation and it would be a more efficient to have probation under the judicial branch and the only way to do that since the judiciary is under the state now, is to have a state model for probation services. And you can abstract that from the additional funding and not necessarily say that there is an expectation that there are funds immediately available to augment probation services.

You do the funding that they are receiving now under and MOE process just as counties have done with trial court funding, and the sales tax money for Prop 172. You just configure the money so that it continues to come from the same source as it does now for the base and then the expectation of the growth goes with the state

budget at such time as they can do it. It gives you a vehicle to promote the growth and expansion of probation that we all have agreed needs to happen with an agency that has the ability to do that. You are never going to see that coming from the counties because there is no way for the counties to ever get more money.

I agree as well. One additional factor is that there are two forces that drive the cost of probation. Two mandating forces, orders of the judicial branch and legislation from the legislative branch approved by the executive branch and they are all branches of state government. If there is to be a linkage between the ability to fund and the authority to mandate, there is only one rational conclusion that can be reached as far as who ought to be paying for it. Right now there is as there used to be under pre-trial court funding there is a decline. The state mandated through legislation how the courts did their business with legislation having to do with rules of pleading, practice, and procedure and the county had to pay the bill. As the legislature created more hoops through which the court had to run its procedures, the more costly court procedures became for any number of different categories of cases, the county got to foot the bill. I concur that we should be explicit. I also think we have to approach it by use of diplomacy of the sort that Rubin has previewed for us in a different context today. Certainly a brusque approach is no approach at all but I think that we bring it forward and through a task force of course we can bring it forward as a finished recommendation that doesn't have a statute tag to it that is immediately going to be introduced by some select legislator. It is going to be out there in the public for discussion. It will be before the Council and CSAC and all the other stakeholders. I agree that the long term solution firmly stated should be one which involves the transfer of fiscal responsibility to the state.

Is there consensus on that? That we clearly identify the transfer of responsibility to the state as to all of the employees who work in the courts and the field?

Yes.

In trial court funding, the employees became court employees after the fact, which presented a lot of problems. I think what Tina was saying today was that if you make this kind of recommendation you need to factor in when those employees become court employees. Maybe not doing it after the fact but at the time of assumption of responsibility for funding commences. Does the task force want to include that aspect?

I think if you say court employees or employees of the individual court you are going to run right into that buzz saw from the first year of the task force, which is the contingent of the bench that views that as representing a conflict of interest because the same people that you are paying to work are the people testifying in front of you and whose credibility you have to assess. That was one of the reasons for my model. Developing a structure that bypassed that while still allowing a state funding model.

You are saying they should become state employees, not court employees?

Actually the proposal that I had put forward largely for discussion and illustration purposes created a series of what I termed probation service centers which would be separate legal entities which would employ the probation officers. Those probation service centers would be funded through the state budget by way of the judicial council processes. All of the legal relationships would be directly with the administrative office. The only linkage with the local court would be the appointing authority of the chief probation officer which obviously would be the great check and balance in so far as policies are concerned on a local basis. But the employment relationship itself would be a relationship of individuals to a probation service center which itself in turn is answerable to the AOC with respect to budget, personnel and legal.

How are they not the judicial branches employees?

There is a difference between the local court in a local county being the employer of the people that work in the probation office versus the people who work in that office being employees of a legal entity, at least as I perceived the concern that was expressed in the first year of the task force. We don't have such a thing now. Probation offices are offices of county government. You would literally create a separate legal entity much as we have for purposes of court employee employment with the courts. You create a separate legal entity in each county and then create an administrative structure whereby those offices would be answerable to the Council through the AOC.

They would be employees of the judicial branch as administered by the Judicial Council.

In effect, yes, although the actual employing entity would be the probation services center. I did that for the purpose of removing them from an employer/employee relationship with judges before whom they testify.

Couldn't you just make the individual probation departments employee units like the courts have become? Do we need to answer that question now? Who are they going to be employees of?

The service center department to me is of no concern it is just a name. The reason that I interrupted was because we were discussing the point in time at which they should become court employees. Is it the point where the state picks up the tab and so forth. That prompted me to recall that the early literature from the creation of this task force revealed some harsh complaints from the judicial side of our group about conflicts of interest associated with a structural reform that would make the probation officers employees of the court in whose jurisdiction they worked. The exercise that was presented a few months ago was designed to find a solution to that problem while still wedding the probation offices to a state funding structure and a state judicial accountability structure.

Why would the presiding judge who has the authority to employ the chief probation officer now turn over the responsibility for the evaluation, hiring and firing of that individual to an entity outside their control?

No. I didn't mean to go back to that. The answer as I attempted to articulate it was that the link that the probation office would have with the court in the same jurisdiction and in fact the only link was that the court would have the authority to hire, discipline and terminate the chief probation officer. That link allows the court to continue to exercise policy control over the direction of the office.

I'm not sure that gets you out of the ethical problem that you have.

There maybe those that say it doesn't. My view is that it creates no worse an ethical problem than we have always had in the sense that the county is the employer of those employees the chief answers to the presiding judge. That is how it is now. I'm just substituting a different employer but not the court. If it is the case that it remains a problem then we have a problem right now that we need to deal with that has I think been previously adjudicated not to exist.

We had Mark Jacobson come in and talk to us about what he perceived to be the ethical issues here and of course as the attorney with the judicial council who deals with ethical issues. His view is that there is no ethical issue but there is a concern. It is a concern that has been raised by Los Angeles and that is 1/3 of the judiciary so we have to pay attention. I think that it is a problem that can be solved. It is not a problem grounded in ethics. It is a problem grounded in something else.

At this point, do we need to provide a recommendation for this or can we just survey the possibilities and leave that for later work?

If we make the recommendation that stable and adequate funding be provided by the state, do we need to go into the details at this point since it is unlikely that it is going to happen in the near future. Do we need to go into all of the details concerning the structure? We probably need to address the ethical concerns raised and include the response we received which is that there does not appear to be ethical concerns. We have looked at the questions raised and have addressed ethical concerns.

In 1982 we were at where we are now with trial court funding. There was at least a commitment or statement of intent in the legislature that they need to become more involved in providing funding to the trial courts when they got the money to do it. In 1992, there was another step forward which said they intend to step up to the plate to provide funding to accomplish this and we are committed to paying for this at x percentage of what those costs are and then increase it as it goes along because of the reasons already stated. There are state policies that dictated the work load that is often driven by judicial decisions. All of those things were part of the reasons we encouraged the state to step forward on paying the responsibility. I think we might look at the language in those pieces of legislation

as a model of what we can do relative to outlining the issues that dictate an advancement of a state buy in of its responsibility. As a starting point, the language that might include in the recommendation of the task force or its findings. That would lead into the other types of issues that we know need to be resolved. One is the employee issue because we know complications of the employee issue nearly sunk trial court funding on more than one occasion. Actually, during the first year it was the employee issue that caused it to not get its final vote in the last house. In 233 it got in only because there was an agreement that the employee issue would be worked out in the task force negotiations. Maybe what we should do is look at the past and say these are the issues that need to be resolved. This is how we are going to go about resolving that.

It sounds like the recommendation is to make the general recommendation, identify areas of study and issues that need to be resolved, but we don't have to provide all of the details in this report because we are going to have to involve other individuals in working out those details. We can work out all of the details.

We have to bring them on board and educate them.

There is one piece of the long term governance model. The second piece as it relates to the views expressed by probation is to maintain one chief probation officer responsible for everything.

The facilities. The courts have continued to maintain a strong position at least Los Angeles, and the AOC that they are not interested in managing the facilities. Judges feel ill equipped to assume responsibility for the facilities which I assume means the physical plant and the employees although it seems to me that the judges and probation departments are now responsible for the services in the facilities. So I don't think anyone is reluctant to accept responsibility. I think if we recommended that the courts assume responsibility for working in conjunction with probation and providing the mandated services and adequate services in the facilities. I don't think that would meet with resistance. I think the resistance is the bed count, the linens, the food, the liability issues that go with the facility. I think those are the issues that are left.

And employees purely of the facility. Probation employees who are providing a service in the facility may be different from employees of the facility that help administer the facility.

Who would that be?

I'm not sure why there is a distinction? You have court employees working in county facilities right now. I'm not sure we really should view that as a distinction. Maybe there is a very good argument to be made as to why we should view them as different classes of employees simply based on where they do their work because they are working in a county building or a county juvenile hall but

Why is the liability any higher? We have officers that are armed and are outside the facility and surely the liability cannot be higher than for those employees.

Another observation to make is that there is a direct link between the services that are being provided and the facility itself. There are some facilities that are set up in such a way that you cannot provide a certain service using those facilities. You don't have the meeting rooms or the access. When we talk about building new facilities we talk about new kinds of designs that are consistent with the kind of services that we need to provide. If we are talking about certain classes of employees those employees necessarily deliver services on some level or another. I don't think it is possible to unlink completely the facility from the services that are provided.

There are two components. One is the component of the employees that work in the facilities. Probation expressed that it is important that those individuals remain employees of probation departments so that employees in the facilities can be used efficiently and the department can encourage employees in terms of future promotional opportunities within the probation department. The next question is if the responsibility flows to the court do the judges assume responsibility for those employees in the facilities? Not repair and maintenance of the buildings, just the employees. A lot of the judges were resistant at first to assuming responsibility for supervision of the employees in the facilities although the juvenile court judges have a responsibility by statute to inspect these facilities. If I remember correctly that was the earlier concern. Although in the last year and a half we have been doing a lot of educating with the work of the task force so I don't know if that still exists. The presiding judges supported this interim model. I don't know if a year and a half ago the presiding judges would have supported this interim model. Now if we make a recommendation here we will send it out for comment, get the comments and then have the opportunity to revise it. The question is do we want to consider making a recommendation that includes having the courts assume responsibility for the employees in the facilities, not yet the buildings?

I didn't read there to be strong objections to that issue. I think the buildings were really the primary concern. I think now because juvenile court judges have responsibility for the provision of probation services to juveniles in delinquency court they have a responsibility to make sure that there are adequate resources and programming for those kids and that is whether they are wards out on the street or in camps or juvenile halls. I don't think you can separate that. I think the real concern is over physical plants and not the employees. I may be misrecollecting the focus of the concern but I don't see a major issue there and obviously if you were to look at a model where the probation employees were not court employees but probation department employees or probation service center employees or under some state entity, then that issue wouldn't exist at all.

Could someone who was at the discussion relative to this at the Judicial Council level enlighten us as to whether this provision of service versus the actual responsibility for the facilities structures themselves was the issue?

It is my understanding that it is also the employees in the facilities and not just the physical plant because a number of the concerns relate both to the issue of separation of powers, liability and what Tina was talking about this morning with the state assuming responsibility for unification, trial court funding, court facilities and that the assumption of all probation including facilities would be overwhelming. But there is a separate issue of separation of powers and that the function of running a detention facility or camp is very different from a court responsibility and that there may be some ethical issues related to probation officers testifying in court and some other things. Those are not insurmountable but the separation of powers issue may be. I had always understood it to be the employees of the facility but that there may be some employees who provide a program in the hall and that those employees might be different.

You mean a night counselor versus the person that puts on the educational program would be the point of demarcation?

Yes, something like that.

Isn't the word use of night counselor there by the part of the continuation of services that are being provided by supervision of that individual for twenty four hours per day. What is the distinction?

I don't know but my understanding is that there could be a distinction.

And, bottom line they all work under the chief probation officer.

In California. The problem is that I can't remember the discussion getting down to that level of detail. Nor did it really focus on juvenile hall staff versus the buildings. The function of administering those institutions was not something that there was support for.

One of the questions that we have to find out is the objection to the administering the building versus the person who actually works in the building and carries out the continuum of services. I always thought that you just didn't want to take on the buildings for liability reasons.

I think it is more than the buildings which is why it never got into the specifics. It was the whole function of administering a detention facility which is beyond just the physical plant.

That was my understanding. It was the concept of the courts overseeing something analogous to a jail.

It also included the fact that if a judge had to order a minor into the juvenile hall there is a separation of power issue because they govern the hall.

Exactly. That is why I say analogous to a jail. Those are executive branch functions.

It never went beyond that because the discussion stopped there.

It appears that you can't meet the objectives of the judge and probation. If the judges are not going to take the institutions or employees then you can't meet the main premise of the probation people who say they have got to do both and you can't separate them.

A lot of the opposition from the judiciary last year and in years past, I think there is a distinction. The law requires that the juvenile court judge inspect the facilities. And you are responsible for all of the minors that you commit to juvenile hall and if the court is going to assume responsibility for all of the employees in the courts and the fields and the probation officers recommend that the chief probation officer maintain responsibility over employees in the juvenile hall, it logically follows that you include those employees in the hall with other probation employees.

They are not correctional officers vis a vis the adult setting. Some jurisdictions call the people at juvenile halls group counselors. They have a part to play in the therapeutic environment that probation is responsible for providing to delinquent children. There was strong opposition from the chief probation officers to separating them out.

They have dual responsibilities. Those that work in the facilities work in the courts as well. They are on a three-day shift if they work in a detention facility and on any off day I may have somebody who works in the camp filling in for my court officer in my courtroom. So you couldn't really separate those who work in the facilities from those who work in the courts under the current structure. They all cross over. If you pigeon hole one group of probation officers into a detention facility officer and someone else is a field or court officer then they don't stay on par and don't have the ability to be upwardly mobile within the department. That would be very difficult.

It seems to me that anyone who had that objection doesn't really understand juvenile justice system.

Probably not but that is where I am so I think that is an important distinction within the department itself and there are specialty functions within.

We may want to get some clarification from the Council representatives who may have voiced some concern as to exactly where that line of demarcation rests at least as they see it.

I think there can be some clear demarcation in relation to the responsibilities related to custody. In Fresno County you do not have deputy probation officers working in the institutions generally speaking. Not to mean that people do not do

overtime in the institutions because they have an acquaintance with the institutions because they are understaffed. But generally you have juvenile correctional officers and group counselors that are distinctively different in their job requirements. The fact that you would have a probation officer work in the field and then Friday night work in the juvenile hall is not by design but because of understaffing. The county people can speak to this because when you have a Deputy Probation Officer III filling in for a group counselor, that person is making 20% more and making overtime. The institutions people don't want that. They would rather have juvenile correctional officers there. One, because they are more apt to understand the process of what is going on in the hall because they work there on a regular basis. The fact that you have a court officer that fills in would be an aberration. If we are to come up with some kind of conclusion there is going to have to be some bending to try to make some sense of how we can solve this issue. I for one was one of the first people to say that I think the separation would be a disaster. I must tell you that I have changed my position on that somewhat. I'm not sure it would be a disaster now. I think there could be ways to rectify that if that is the only option we have to move forward on this. Otherwise we are on an impasse.

There are some counties in the state that have probation officers that work in their juvenile halls and that gives them staffing flexibility and it works well for those jurisdictions. The other point that I would like to make is that in terms of the continuum of what goes on, we start our case assessment process and our case plan process in juvenile hall. To continue that through their court process and then if they go home and placed on probation to their field probation officer, it provides a seamless continuum in terms of the training that those officers receive and the living document that becomes their case plan. And, that is a mandate in terms of what we do for our TANF program. It works very well right now with all of us being in one department having operational control over the elements of those case plan and how those documents are understood by the entire department.

Is that a probation officer doing intake?

Yes.

It really doesn't matter what the titles are, the big issue was that judges are responsible for inspecting the facility. When there are flaws and deficiencies in the facility the judge is now the leader of the facility and is thus liable.

And that is what I was focusing on in terms of the concerns with the physical plant but apparently there has been some other discussion at the Judicial Council level about employees.

There has not been a discussion regarding the level of specificity that you want to break the institutional question down to. It really ended at the point of saying that there was no support in assuming the responsibility for the institutions. We never got below that.

We brought the people over from Arizona that says this is how we do it. It works.

It sounds like we have general consensus that it makes sense to keep all of the employees together under the direction of the chief probation officer to provide a continuum of services and what Norma said really needs to be a part of the report. What in reality is happening when a minor comes in to juvenile hall. This is the continuum of services. It sounds like there is general consensus that this sounds like a good idea but we need to find out as to the employees and the services what specific objections were there by the Judicial Council, the AOC and the judges. I was speaking at a meeting of the presiding judges and court administrators and they were adamant about the facilities but I think it was the building and the conditions, which is the next subject. They did raise the ethical issues of assessing the credibility of a probation officer who is a court. We have already gotten feedback on that to include in the report. This is done in other states all of the time and truly if you get to the bottom line and those counties where the judges are appointing the chief probation officer who then supervises all of the probation officers and then you have a probation officer testify in your court, you a judge whether you had any involvement in selecting the chief probation officer, are assessing the credibility of an employee of a person that your court has selected. I think we can do education on that. The ethical issues can be addressed in the report. In terms of assumption of responsibility for all of the employees, before we finalize that let's determine if there are other objections by probation, counties, judges or the AOC to that assumption of responsibility, which would provide probation with flexibility, and upward mobility.

Do we have some consensus on that issue?

Yes.

Facilities. We are talking about the juvenile halls, camps, ranches. Anything else?

Detention and treatment facility was our generic term.

What about the buildings that probation offices are in?

So many of them are mixed us buildings.

Does the task force want to talk about the offices where the probation department is located or the detention and treatment facilities?

Aren't we talking about who is responsible for the maintenance and the payment of those facilities?

Yes but we need to define facilities first.

I don't know why you would exclude their offices. There is a cost to providing those offices whether it is through a county facility or outside so it should be included.

I don't know if we ever addressed the probation officers offices in our previous report.

I get the impression that the issue was the detention facilities and not related to the cost of the physical space that probation departments need to operate.

We talked about that once and decided to table the discussion pending the results of the facilities task force.

We were all waiting to see what happened with the facilities task force and if you use that for a basis of analysis and we have already gotten at least some policy direction that we ought to at least own and maintain the buildings that we occupy it would lead towards including the facilities.

I think we should raise the issue, separate it out and note that there is substantial opposition to taking over jurisdiction of facilities and I think we also need to note that other states have done it. Arizona and Connecticut do it and haven't had a problem. We need to note that it is a severable issue. It may take longer to work on that then a governance structure but I don't think we can provide an ultimate recommendation on that issue.

The condition of the detention facilities is a big point. I don't think county or court either one can make an argument that says the state ought to take over some of those facilities. We are lucky enough to own them and would be happy to give them to whoever would take them but the reality is that I'm not sure I could recommend that with a straight face. Maybe the recommendation is that as new facilities are developed a contract relationship between the state or the courts or whoever has it with the counties for the existing facilities. I think there are ways to get around that without them actually taking them over.

CPOC did a survey for a bond measure and looked at how much it would cost to remodel facilities and add new facilities as were needed. The number was \$688 million dollars. So that is what is sitting out there. It will probably be more by the time we finish.

The recommendation is that we discuss facilities, the concerns, the condition, the present reality of how they are handled and funded right now. Sever the issue out and make it independent of the governance model and pursue further study.

And to some extent it works as a local governance issue. It reminds me of the Tulare county situation where they had a dilapidated juvenile detention facilities and it remained that way until a kid tried to shoot another kid across the road and a dentist drove between them and was killed. That became the rationale for a bond measure to get a state of the art facility. It is sad when it has to come to that for adequate facilities to become a priority.

We can sever that issue out and state that there would be substantial objection at this time to any state take over of those facilities and just reserve it out for later consideration.

Isn't that discussion going to take place quickly anyway with some district attorney or public defender currently occupy court buildings presently and with the new passage of legislation they are either going to have to go somewhere or pay rent or do something. So it will be brought up.

Actually I don't think it will. The facilities task force legislation basically says if it is a shared use building everyone is protected as the space as it is today without cost. If the office space is now going into this new organizational structure that recognizes that it is no longer a county responsibility to maintain that do you compensate the county or not is something that will have to be addressed. Those issues are not going to be handled by the court facility issue as to whether you have a right to remain there.

The discussion between the court and county relative to the continuum of service versus the distinction between people working in the facility or not. The one issue that did come up in the interim report comment period is that counties were saying that we are recommending a dual hat situation here and we can't live with that. If you build into a recommendation something that recognizes a dual hat responsibility you will get the same reaction. For most people it is one side or the other who is going to be responsible for these folks or that building. So it is clear that it is not controlled by the county that the court has to live with and therefore a continuum of services exists but the county is responsible for this continuum up to this point and the court is responsible up to that point. I don't know how that survives the negative reaction that I got relative to the dual hat situation.

One thing you could use as ammunition to make that dissolve is that we have that very circumstance right now as a result of trial court funding. We have a bunch of court employees doing business every day in county owned facilities.

I'm not talking about facilities. I'm talking about the provision of services.

When you say provision of services you mean ...

Employees or the costs of that services be related to materials that are provided in that detention facility versus the employee that is using these materials to carry out the continuum of services. That is an issue. For example you have a probation officer that sometimes is the counselor that provides overnight supervision in a juvenile hall and you have a counselor that is providing an educational program during the day but that person is under the auspice of someone not controlled by the county. That is a dual hat situation that I don't think would be acceptable to a majority of counties. But, it is a real test between the continuum of services being provided as probation folks want. The court's have an ethical concern. The counties have a concern relative to splitting up that authority and responsibility for

that individual for carrying out either that continuum of services or in distinction of where the court is being involved in the supervision of that individual as well. Don't lose sight of the fact that the counties have a concern about splitting up the authority relative to services that we have no control over.

Is there a concern if the recommendation is that the courts assume responsibility for all employees and services.

That is exactly what I am saying. In that case, No. If it is a state agency that assumes responsibility, No. if it came about that the recommendation was we are going to assume these services and the employee responsibility up to a certain point, they are still evaluated and reviewed by someone other than the county but county you are responsible for those employees. That will not fly.

Maybe we should use the more generic term judicial branch so we don't have even if there is good strong legal authority that supports proposition there is no conflict, we can at least keep that crowd down to a low roar if we use the word judicial branch as the employer. Then we can get to the details.

Another point, every county's department works a little differently when we talk about services provided because probation is a county entity, using LA for example, mental health is provided in the hall by the county, education is provided by the county so it is much more than just probation officers supervising that is involved when you talk about services that are provided in the facility. If we talk about the state or court taking over all of it, you are not just talking about probation officers. These other services would have to be provided or picked up as part of the cost.

You can draw up a contract just like we do in the jail. It would be a judicial branch contract.

Those aspects should be reflected in the report so that it is clear that we understand what the existing reality is.

Does probation pay for mental health in the institution?

No. it is paid by Mental Health.

Then that would not be relevant to us in regards to this discussion. Right?

It depends on the level of intervention as to whether you pay for it.

We don't pay for the schools, right?

Unless some probation departments run their own schools.

I just want to make sure that there is an understanding that this doesn't add additional responsibility cost to AOC if this model works.

I we go back to the original premise that all we are doing now is taking the funding stream that is there and transferring it to the judicial branch to fund the same programs.

The ancillary services provided in the halls and ranches by other county employees are provided because those children are eligible for those services whether or not ...

Exactly. They could be in a group home, regular school or juvenile hall.

But they certainly fall under the indirect costs of running a probation department.

Right. And they should be recognized and as further work is done on facilities I think it is important to include this in the discussion because I think most people and many judges who have never been assigned to juvenile court would have no insight into what services are being provided and who provides the services. I think that all of that should be included.

Don't juvenile court judges become involved in approving the detention or treatment plan?

Yes.

And they are deeply involved in that both when they do it locally and you argue that they should be more involved when they go to a state agency. Correct?

Yes. Well, that is my position.

The fact is that is kind of a fundamental question, is that because you are involved in it in the recommendation whether or not that is a probation services that should be a judicial branch responsibility. Is it part of the core services that are being provided to people on probation. I open the question I don't know the answer.

It is a core service to the extent that we are mandated to do it. We have a number of regulations that dictate the case plan.

Do you know if those costs are captured in this type of budget?

No. I doubt that they are.

That is definitely something to look into.

Do we have a recommendation on facilities?

It sets the direction on all of these issues. It sets the long term governance. There is a strong recommendation on funding. A strong recommendation on long term governance. A strong recommendation with respect to judicial branch involvement in supervision and a strong recommendation on continuing work on the issue facilities. We can benefit from the work of the facilities bill and task force as we can benefit from the court employees task force and their bills and learn from what they are doing. This definitely sets the long term plan which provides us with the ability to discuss the short term interim plan with a clear view.

I don't want to mislead you. The reason why the court facilities issue was so supported by the council is that they believed it was core to their operational program and the functioning within those facilities they wanted control over.

Philosophically, I don't think the courts are there yet relative to detention facilities.

That may be but there are a lot of judges probably in the juvenile courts that feel that placement or supervision of minors is a court responsibility and the question is how far does that responsibility extend. There are those right now that would be willing to accept facilities. It is a very small percentage but I think we have decided that it is not an insurmountable undertaking.

Every time I think about this issue, I go back to the Arizona presentation, where it was presented that under the old system judges would inspect the facilities and make orders to remedy deficiencies and now that they are under the state the presiding judge calls the Chief Justice and explains the problem. The Chief Justice can then advocate for them with the legislature. It is much more efficient. I think that other than the blinders that we have, something like that is possible. It may be a better way to have juvenile institutions run, but I recognize that is a very strong minority view among my colleagues on the bench and because of that we need to sever it out and let people know that it is a separate issue that may take a long time to consider but also note that there are states where the judicial branch does have jurisdiction over juvenile facilities and it works.

In the interim, we can work out a contractual relationship to solve the problem and move forward with the rest of it.

As further study is done it may be that there are other models that are mutually acceptable that are workable that maintain services under the probation department and maintain employees and services within the judicial branch but address some of the facilities issues that seem to be the toughest issues in a different fashion than we have even considered. That is the recommendation. Do we have consensus?

Yes. So we have our long term plan.

I have great concern and if it is decided by the task force that this is an issue that no one wants to discuss anymore then we will move on, the proposal we are suggesting here is that everything in probation goes to AOC. With that said, we already know that AOC says no. Vickrey has made it clear that he is totally against it. I get the feeling that what we are doing is driving off the cliff with this plan. That said, I think there is a way to still make the point without saying that everything in probation goes to AOC. A comment was made that the responsibilities of probation are based on what the judges tell them to do and what the legislators tell them to do. Those are clearly separate from what county's responsibilities are. They have little or no control over those things and I think that if we were to introduce that in a softer vein, rather than saying the task force came up with this great idea and we want AOC to take over everything probation does in addition to all the responsibilities probation has in the institutions. If we were to

soften that to say something like, this is then a natural progression since trial court funding brought the courts into AOC's venue that the AOC should consider accepting probation services in that spirit. Rather than delineating that would include institutions, all staff and everyone involved. I'm just very concerned that what we appear to be doing is telling AOC that this is the way we want to go and I know that many of us feel that this is the way we want to go because I in many ways believe that this is the right way to go. I'm just very concerned that this will just get shot down and put on a shelf.

Are you saying don't delineate the issue areas within the personnel structure.

I'm saying you could delineate them as discussion points. These are issues that have to be addressed rather than saying all of these services should go to AOC. They will look at that and throw it away in my opinion. Just like if we were to go to CSAC or probation and say we are going to separate the institution. Both have said no. We seem to be willing to push AOC into a corner and I don't understand that.

From the comments, we are not clear where the line of demarcation is and it might be at facility.

We are going to find that out.

It seems as though a recommendation to be successful has to be supported so we don't want to make a recommendation that doesn't have full support or at least as full as we can get it. I cannot specifically recall the objections to assumption of responsibility of employees. I remember strongly the objections for facilities. As to the employees, I cannot remember. I want to revisit the opposition again.

We spoke about not having a long term model that is as detailed as we discussed but really laying the groundwork for the first steps. And perhaps developing that further while simultaneously what we just developed and when we write the report have the two tracks we are working on and in February we can revisit this issue when we have more information rather than hashing out now when we do not have full information.

I agree with what you have indicated. On the one hand I don't think we should shy away from a solution that otherwise seems rational simply because we have a fear that someone may oppose it. Were we to do that we might as well fold our tent. And I'm not clear that the Judicial Council has done anything other than authorize and support the creation and the work of the task force. I have the understanding that there is concern within the AOC about facilities and I think it is well for us to get clarification on that but I don't think we should at all shy away from making recommendations and let the chips fall where they may after we have had a chance to get feed back and refine this thing over the next meeting or so that you have obviously agendaized.

It's just that there is a linkage that is fundamental. It is the legislature and the judicial branch driving the costs, no one else does, and the relationship between probation offices and courts in terms of the probation offices serving functionally as an arm of the court in the supervision of probationers. You put those three into the matrix and it is self evident that one follows the other like day follows night.

I don't think anyone disagrees with that. I just want to be careful about making a recommendation that will not even be considered. If we can get a response from the judicial council that says lets move forward on this or we will entertain that idea, then the recommendation stands true. It is not unlike what Rubin said that he goes to his board and they might not agree to what we come up with and they won't co-sponsor. I am not suggesting that we change the recommendation, I am just saying that at the very least we make sure we get a position clearly stated from the AOC. I think all of us agree that separating probation is a mistake, etc. but if we are flying off a cliff, maybe if we backed up our position a bit we wouldn't go flying off the cliff.

Bill Vickrey came to a meeting in June of 2001 and clearly stated that the AOC would not assume responsibility for facilities. We did not ask the subsequent question of "do you mean the physical plant or the facilities administration as well?" There is some disagreement as to what that means. My take away from that was that it meant the physical plant as well as the facilities administration. Others believe that it meant just the physical plant.

We came to a consensus of what is going on. Probation system of governance and finance is broken. There is an irrational split of authority. There is an under funding condition. The programs are very complex. We have all discussed those issues straight out. The current system both internally and externally there are conflicts between courts and counties and the provision of the continuum of services under that system. We also came to agreement that we jumped to a state model because we recognized that is where the money is and that is where the centralization is ultimately going to have to occur. The approach we might take is to say that the state must recognize that because its policies and statutes direct these costs and the courts policies and orders and directives to probation also have an impact on costs and they are so intertwined with the functioning of the court that in fact they have to have some involvement in the governance model that will ultimately solve many of these problems. They have to be involved in that process some way. The state has to be involved to a greater extent initially by implementing a funding stream or guaranteeing a funding stream or increasing their fiscal responsibility for these types of programs. A model that we think would be a good basis is what happened with trial court funding. It was recognized that this was a state program whose costs were controlled by entities other than counties, that there has to be a shift of that responsibility. The first phase is that the state recognizes that it is your responsibility and makes an attempt to get them to commit to incrementally increase it with the goal of ultimately assuming

responsibility. And then recognize that that occurred in phases. There are certain issues that still need to be resolved. The ultimate goal is “state this is your program”. “State assume it”. Then maybe that is where we get. I don’t think it is a problem relative to listing issues that need to be resolved if we go to them and say you have to solve this problem because it is your problem and it can’t continue to exist as it does now because it will create greater problems with drastic effects to both the community in which these probationers exist and on the resources that the counties have to provide these services. If we go in with that attitude and just say state step up to the plate, here are the things that you have to resolve along the way we can help you by suggesting the following when we come to some consensus if that is a good approach. Maybe that is the way to go with our final report and structuring it.

If this comes about, it is not an event, it is a process. This report will hopefully begin the process but it will take time.

I’m very pleased with that if that is the approach. It makes sense.

Is this the approach that the task force would like to take?

Yes.

Should we mention in this recommendation that the state or the judicial branch as they recognize the problem and assume responsibility do we need to discuss or do we need to include the fact that assuming responsibility would also include the responsibility to shift funding to the state and the judicial branch assumes responsibility for appointment supervision, and retention of the chief probation officer.

Once you shift responsibility, authority goes with it.

We are not going to solve all of the problems that we discussed today. Facilities will be a sticky point that we are going to have to work on. Whether the counties can step forward a bit or the courts can step forward a bit or probation can join us, there is no way that we are going to solve it today or tomorrow or even when we come up with an ultimate plan. That is a sticky problem. I don’t even see the tunnel much less the end of it.

Short Term Model

In terms of going back to the short term and doing the educating. If the long term is phrased as you just phrased it with the assumption of responsibility ultimately by the courts in all non charter counties. The short term would involve both the county and the courts in that process while the funding still comes from the county and while there is still dual involvement in all of those issues. This would be a short term model that would hopefully transition to the long term where the county would be relieved of funding and liability.

I think you don't have to phase it in to the extent of wait until the interim model has to proceed in a vacuum. The interim model could proceed at the same time that we are going to the state and saying that you have to step up to the plate and taking whatever procedures we can to try to do that to try to sort out where they are going to provide that funding, how they can provide it at the same time this is an interim model until all of the governance issues are transitioned to another entity. That way you get some of the nay Sayers from the county saying that this really is an interim model. You are seeking funding now and you are seeking to solve these other problems, maybe I can buy in to that. I think a lot of them didn't believe that there was a next step after this. Maybe we can each refine our view of things. The county looks at their view and says lets sort it out this way. Maybe the Judicial Council can say this is what we really mean relative to facilities or employee issues. Maybe probation says, okay maybe that is not a continuum of services but something we would like to provide but it doesn't really tie into the core services that is part of our mission statement. That gives each of us the opportunity to compromise from where we are. Right now we can stand back and say we aren't going any further than this and courts can do the same thing and we don't have an agreement.

In terms of the long term model, it sounds like we have an approach. In terms of the short term model, are we going with the short term model we proposed with ongoing education and a suggestion that legislation be proposed that doesn't clearly outline the interim model, it's a legislative device to state the purpose and as we go along it will be filled in with the interim model.

That is a tool you can use it is not a problem to do that and you don't have to wait until December 5 we can wait until January to introduce it.

And we can decide as we go along even which approach to use. We may find that education has worked so well that by the end of January early February we want to put this language into a bill. Or we could do it at any point. Or we could choose spot bill approach and put this in later if we feel like we have work to do. We don't need to draft that up and ..

It would be version 2, right?

Yes.

We have to get some input from the chiefs since they seem to not like it much.

After December 11. That is why if we introduce the bill as a declaration of intent, it gives us time to do education and get feedback from the chief probation officers.

But it would be the internal plan that we have right now absent some new information of the negative sort, to propose moving forward with version two. You don't have to have a certain date for the introduction other than final dates for introduction that don't occur until late February or early March. We have time to

do that but between now and then, we start refining our educational tools to talk to our own folks again.

The idea of introducing it in a spot bill without the clarification of language is only to protect the time limit set up by the legislature. There is a certain period of time when you can introduce legislation in order to meet that even if we don't have everything refined and exactly how we want it we can put the declaratory language in. As far as I am concerned, I think the education process baring the final recommendation hopefully puts us in a position that version 2 will be in the legislation.

We don't really have to agree although I think there is consensus around the room that that seems to be closest to satisfying the greatest number of people.

Is that the plan then? The plan would be to proceed ahead on the short term model but begin to introduce legislation, get feedback from the chief probation officers statewide. Continue to educate and get feedback. We will have time to address this issue again. Do we need to address this issue again before our February meetings?

Do we have an author in mind to carry the legislation?

We will talk to folks.

Is February soon enough to get the feedback? We can get the feedback after the December 11 meeting from the chief probation officers and circulate that by email. Do we need to talk or get together before February 5?

Why don't we leave this as an option and put everyone on notice that we may need an interim meeting that may be by conference call.

That would probably occur sometime in early January.

We will start writing the report. Do we need further discussion on the long term model? No. The short term model? No.

The interim report is the bulk of what we need.

The interim proposal came out with language to the effect that in a hiring circumstance the recommendation from the panel would have to be unanimous. I don't recall that we decided on this language. Is this a stalemate problem? I want to find out how that got into the proposal and what the thought process was.

From the counties perspective that was clearly something that we had to have so that we weren't in a situation where there was a candidate that we couldn't accept going forward to the presiding judge and possibly appointed.

Why won't a simple majority work?

Our intention was to make the default model so onerous that they would work out their own model.

If a county and the judges don't like that model, then they create their own model.

Is it a workable default model?

I'm not sure we wanted it to be. That was the point.

In the event that people do go to the default, it has to be workable. If you have equal numbers of board members on the panel if the county has an objection you have the ability to stop that person from going forward.

The workability factor is that this candidate must be acceptable to all parties because that is the consensus that you have to reach to avoid problems.

It protects both sides from the situation where a candidate goes forward that they don't like. If they can't come to an alternative proposal then they have to come to a compromise candidate.

I don't see how they are going to agree on a default model if they can't agree on their own model in the first place.

That is a generic disagreement not attached to a person. You can have a situation where you have an inability to reach an individualized protocol and the ability then to agree to a candidate. It may be much ado about nothing as a practical matter because whether it is unanimous or a simple majority you have to have three and three and four are about the same in this model.

When you have one person so adamantly opposed to that person becoming the chief it seems that you are setting yourself up for failure by moving this person forward. That person will be an obstacle to the chief probation officer being successful at their job.

The point of the unanimity was to force collaboration. You might get a compromise candidate but there are certainly great compromise candidates out there.

Probation Advisory Committee

The thought would be that with the long term recommendation there would be continuing work that needs to be done.

With standards and guidelines it was difficult to go forward with them until an authority was identified. If we are going to a state model it could be tied to that but I'm not certain it would be congruent with an advisory committee if we had legislation that asks the state to start funding. Probation services might be tied to some of the standards we developed may be a way to start building standards.

If the model is a state model, you can modify the standards we have drafted to reflect that. If you want to develop more, you could but you don't know where things will end up. The standards that we did are from the interim report and we may want to beef them up based on the state model.

We will include and modify standards drafted by the committee to reflect the state model consistent with the long term direction that we are recommending in the report.

Are we also recommending minimum qualification standards as part of that?

The county objection is that as long as we have the fiscal responsibility for the system we are 58 independent governing bodies that are responsible for that. We have as part of our platform that local decisions relative to that type of standard is objectionable. If we are talking about when you create the state entity that is the governance of the new probation system these would be appropriate.

There is a necessary connect between the standards and guidelines and the state model and they only are worthy of consideration or discussion if we get to a state model.

Whatever guidelines we put out will only be followed if people want to follow them.

They are only guidelines if they are not put in a statutory provision that says in order to get your funding you have to adopt these guidelines.

One of the advantages of the state model is that you can impose statewide standards and that is fine.

Do we agree that it should be suggested in this report that individual counties could look to these and implement them?

Only through the meet and confer negotiations with the union.

The standards that were developed were based on our recommendations from the interim report. If counties want to follow some of those recommendations they could but it doesn't mean that they have to. In the future you want the standards to become the criteria for getting funding. That will not happen until we go to the state model.

As set forth, the standards and guidelines will be advisory only. A lot of them are not meet and confer issues.

I suggest that you weave this in to the arguments to advance greater state participation with the ultimate goal of standardizing a central governance model.

We should be careful when using the terms central governance model. It might be that it is a centralized component with a decentralized governance like the trial courts. We don't want to close any doors on ourselves.

One of the principles is local control even though we have a statewide framework.

I think we should say if there is an adoption of a state model there should be minimum qualifications for a chief probation officer and we can put out some

suggestions as to what they might look like. We have the ones submitted by CPOC, Maddux legislation.

Do we want to recommend that if a state model is adopted that minimum qualifications should developed or should there be further study on this? Is that something that you want the advisory committee to look at?

We should recommend that there should be minimum qualifications with the state model as with standards and guidelines. Some suggestions include the following. Should we move to a state model the advisory committee should do further study.

Do we have consensus?

Yes.

We are including laws and mandates in the report. Yes.

How will the probation advisory committee be structured?

Are we assuming long term governance under the judicial branch? Then it is self-evident

It seems that there has to be a vehicle because the Judicial Council operates through its committees and there would be no other vehicle to bring probation issues to the judicial branch. You would establish by rule a probation advisory task force you can deal with the membership at some other point. It could have outside membership. You clearly have to have a vehicle to develop issues, create the policy recommendation and take them to the Judicial Council.

One thought is a potential for combining this advisory committee with another standing committee instead of creating another advisory committee of which there are now 16. It might fit with criminal law advisory committee. Criminal and Probation?

The Family and Juvenile Law Advisory Committee has a lot of involvement as well.

I'm thinking in terms of tight budget times and a trend to look carefully at the number of advisory committees that the council has. That might be a way to maximize existing resources.

I think long term it ends up with an existing standing committee to the judicial council but as we have discussed it will take a long time to get there and in the interim we will need a multijurisdictional body like this one. I think that if you try to fit it into an existing committee you are not going to have the representation that we have in this group which will be necessary to continue the work of this group.

I agree. There needs to be a multijurisdictional group of this sort. To keep managing this process as long as it is moving forward, once the state model is adopted I think there would need to be an independent advisory committee because there will be lots of issues that will come up as the process develops.

Perhaps down the road merging with another advisory committee would be the way to go but this is going to be a major undertaking.

If we had all of the questions answered I would say that it absolutely could be combined with a standing advisory committee. We have not and will need consensus from the stakeholders until these issues are resolved. An advisory committee with a make up like this one would be appropriate.

Who funds and staffs it?

That needs to be discussed.

Does that continue as an independent group with some funding until such time as there is some transition or assumption of responsibility by the state? Yes.

What are we going to do in the interim?

The charge of the advisory committee would be: continuing to look at the funding issues, continuing to develop standards and guidelines with the thought that we would be moving to state model, continuing to look at employee issues, facilities issues, looking at the mandates rules and statutes to clarify any inconsistencies.

Assuming there is no affirmative legislative movement it is in a netherworld and the AOC would be adverse to a committee at that point because they would have no responsibility role or authority over probation services. That is why I was asking what we would do in the mean time unless there was some continued game plan or end state that you were trying to get to. And I would suggest in some short order because if it is years out there it would be hard to keep any committee working for years and years. After June, assuming nothing happens, it is a state of on hold.

Once the report comes out is the judicial branch willing to pursue that?

I would assume we would want to go together with all of the parties.

As we get closer to the final report, one of the recommendations is proceeding with legislation to carry that out. We have to think of adding to or recomposing a group to carry that out. One thing I suggest is gaining the interest of the administration vis a vis DOF, DOJ, whoever and people in the legislature so that we have them at the table. It is almost too soon to decide the composition. We think the state model is the way to go. We know there are issues out there that we have to resolve. In overcoming those we have to get a body to help us implement whatever recommendations we have. We are not there yet. If it is a long range project we have to think about these other folks.

Is there a recommendation to continue the work of this task force? Is there a new body that becomes the advisory committee?

Work that is contemplated by the report may be accomplished by a collaborative mechanism that is devised with the consensus of the stakeholders. That may be the

best way of bringing forward our concern that there ought to remain a structure and at the same time putting it in their hands as to what that structure should look like and in giving that group a charge.

Defining what that group would do, setting forth the charge, and then defining that the probation advisory committee has to be a collaborative effort with representation from the stakeholders with further discussion of bringing others in.

Leave the structure of that group to the stakeholders.

Should they appoint that group they are implicitly or maybe explicitly accepting the recommendation to move forward with the legislation to move to a state system? Why would you move forward with an advisory committee if you didn't accept the recommendations?

We might peak the interest of the administration to form and appoint a working group to work on this. It would be a positive sign if we could get this. We can start exploring this.

There are people that are interested but the problem is that they are such short timers and this will take a long time.

Is everyone satisfied with this recommendation? That we recommend that in order to implement that which our report will lay out a collaborative structure be developed in which the stakeholders acquiesce. This puts us in a position of perhaps encouraging the executive branch to become a stakeholder by saying that they would like to run that working group for example. It would leave it more open as our suggestion without specifics.

And, we would outline the proposed charge.

Any other business?

Brown Act

Really all that we can tell you is that once we started getting feedback from counties regarding how to get around the Brown act on this as a standing committee status detailed in version 1. The Brown Act provides exceptions for personnel actions but also recognizes that if there is a standing committee even to be involved in personnel or other closed session matters that they would have to comply with the Brown Act. It complicates things by having a majority of the board participating in the standing committee. That was the reason that an issue was raised. In the collaborative process of the default model it doesn't apply because you don't have a standing committee. If you do have a committee that is the same membership throughout, then you might run into some complications but they are minimal in comparison with the first one. We have not had the

opportunity to check with the experts but I looked over it and I think this one is a step back from the problems raised by the first version of the interim model.

In the legislation we can design it so that we are not causing a problem with the Brown Act. Or we can make clear that we do comply and this is how you comply.

Meeting on November 8 is cancelled, as business is complete.